IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 264 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GRASIM INDUSTRIES LTD. - Petitioner(s)
Versus
DISHA AGRO INDUSTRIES LTD. - Respondent(s)

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Appearance :
MR AR GUPTA for Petitioner No(s).: 1.
NOTICE UNSERVED for Respondent No(s).: 1.

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CORAM :	**HON'BLE MR.JUSTICE K.A.PUJ**

Date : 20/07/2005

ORAL JUDGMENT

1. The petitioner has filed this petition under Sections 433 & 434 of the Companies Act, 1956 for winding up of the respondent Company on the ground that the respondent Company has failed and neglected to pay an amount of Rs.3,40,276.96/- along with interest thereon @ 24% p.a. as on 31.08.2000 to the petitioner.

2. It is the case of the petitioner that the respondent Company has been purchasing cement from the petitioner by various orders of the Company and had a running account with the petitioner. The petitioner had supplied goods as per the orders of the said Company and that the said goods were duly received by the said Company. It is agreed between the parties that the Company is required to pay the amount of supplies made to the Company within 7 days of the supply failing which the Company is liable to pay interest @ 24% p.a. Against the supply of the said goods, the

respondent Company was liable to pay Rs.2,93,281.00 to the petitioner as on 31.12.1998. The respondent Company thereafter made the payment of Rs. 75,000/-. The petitioner has issued several reminders to the respondent Company. However, the payment was not made. The statutory notice was also issued on 25.07.2000 which was duly received by the respondent Company and despite that no payment has been made by the respondent Company. Hence, the present petition is filed before this Court.

3. Notice was issued by this Court on 16.10.2000. However, the factory was closed and hence notice could not be served. This Court has passed an order on 11.12.2000 and only with a view to give one more opportunity to the Company, fresh notice was issued. The Court has made it clear that in case the Bailiff found that the factory was closed, the respondent Company be served with substituted service. Since the factory was

closed, the respondent Company was served by substituted service. Despite the service of notice, nobody has appeared on behalf of the respondent Company. Hence, this Court vide order dated 08.08.2001 admitted the petition. However, the order of advertisement was deferred. The order of advertisement was thereafter passed on 18.11.2002 and the petitioner was directed to publish the advertisement in “Indian Express” & “Sandesh” - both of Ahmedabad Editions. Publication in the Official Gazette was dispensed with.

4. Pursuant to the aforesaid order, the petitioner has effected the advertisement and affidavit of publication was also filed before this Court on 11.07.2005 and along with that relevant newspaper clippings were filed.

5. Since all the legal formalities were over, the petition is taken up for final hearing. Mr. A.R.

Gupta, learned advocate appearing for the petitioner has submitted that the respondent Company is closed since long. There is no dispute about the outstanding liability to the petitioner. The respondent Company has itself admitted in its correspondence that due to financial difficulties, the payment could not be made. Despite statutory notice, despite substituted service effected on the respondent Company and despite the advertisement, the respondent Company has not taken any care to appear before this Court to defend the present petition. All these averments which are made in the petition have stood uncontroverted. He has, therefore, requested to pass the final winding up order.

6. After having heard learned advocate appearing for the petitioner and after having gone through the averments made in the petition as well as the documents attached therewith and after having taken into consideration the fact that the

respondent Company has not appeared before this Court, the Court is of the view that the Company is not in a position to defend the winding up proceeding against it. The respondent Company has failed and neglected to discharge its financial liabilities. Its financial substratum has totally lost. It is, therefore, not in the interest of either Creditors, Members or even in public interest to allow such Company to remain in existence only on paper. Accordingly, the respondent Company is hereby ordered to be wound up. The Official Liquidator attached to this Court is hereby appointed as the Liquidator of the company. He is directed to take charge of the assets of the Company. He will exercise all the powers conferred on him under the Provisions of the Companies Act, 1956. It is, however, made clear that before appointing any Security Agency and/or Valuer for the purpose of taking inventory, he should take prior permission of this Court. The Official Liquidator is further directed to

invite the claims of the Workers and the Creditors forthwith.

7. With the above direction and observation, this petition is accordingly disposed of.

[K.A. PUJ, J.]

Savariya